



## Meeting note

<b>File reference</b>	TR010019
<b>Status</b>	<b>Final</b>
<b>Author</b>	Kate Mignano
<b>Date</b>	25 February 2015
<b>Meeting with</b>	DLA Piper, the Highways Agency and the M4 Alliance
<b>Venue</b>	Rivergate, Temple Quay, Bristol
<b>Attendees</b>	<u>For the Applicant</u> : Lynne Stinson, Henry Penner, Emma Harling-Phillips, Reza Newton, Steve Finnie, Caroline Soubry-Smith and David Jones <u>For the Planning Inspectorate</u> : Susannah Guest, Richard Price, Will Spencer, Lucy Hicks and Kate Mignano
<b>Meeting objectives</b>	Project update and to discuss draft documents
<b>Circulation</b>	All attendees

### **Summary of key points discussed and advice given:**

The Planning Inspectorate advised on its openness policy, explaining that any advice given would be recorded and placed on the National Infrastructure website under section 51 of the Planning Act 2008 (as amended) (the PA2008). Any advice given under section 51 would not constitute legal advice upon which applicants (or others) could rely.

### **Project Update**

Prior to the meeting DLA Piper (DLAP) had provided a number of draft application documents which the Planning Inspectorate had reviewed.

DLAP explained that since the draft documents had been sent to the Planning Inspectorate, work had continued on their preparation. Schedule 1 of the draft Development Consent Order (dDCO) had been completed, with all works now being identified in the description of authorised development. All works were to be defined as integral and that no works had been identified as associated development. Schedules 3 and 4 had been amalgamated, and the Works Plan completed.

DLAP outlined the discussions with the relevant departments of the local authorities about the requirements in the dDCO and particularly in respect of the Construction Environmental Management Plan (CEMP). The Planning Inspectorate enquired as to whether Requirement 5 might be expanded to include a list of matters that the CEMP would be addressing. DLAP stated that it would consider that request.

The Planning Inspectorate asked if the dDCO had been shared with the local authorities. DLAP explained that environmental and planning issues had been

discussed with the local authorities, but that they would not see the dDCO as a whole until the application had been submitted.

DLAP confirmed that the relevant statutory undertakers and assets had been identified and that discussions were on-going. More work was expected in respect of the wording of any protective provisions in the dDCO, and the Applicant hoped to have these available during the pre-examination stage. The Planning Inspectorate highlighted the advice in Advice Note 15 that states that where agreement on protective provisions had not been reached during pre-application, applicants should as a minimum submit on application the standard protective provision of the relevant party with any amendments that the applicant is seeking to it.

The Planning Inspectorate asked if the Applicant had consulted with statutory bodies regarding the scope of the Environmental Impact Assessment (EIA). DLAP explained that the Applicant was in conversation with the Environment Agency (EA), English Heritage and Natural England (NE) and that these bodies had seen the detailed Preliminary Environmental Information Report. Statements of Common Ground were being finalised with EH and NE, but were not as far advanced with EA.

DLAP explained that Variable Mandatory Speed Limits would not form part of the dDCO. This would be dealt with separately by means of a Statutory Instrument (SI) which was currently out for consultation. For information purposes this SI would be included in the application documentation.

DLAP stated that a Temporary Traffic Regulation Order would be included in the dDCO Schedules. The measures would be assessed in the Environmental Statement (ES) and the wording would be agreed with Department for Transport (DfT).

The Planning Inspectorate asked if all Crown land had been identified in the land plans and queried the status of certain plots of Crown land (in respect of how any ownership rights might transfer from DfT to the newly created Highways England organisation after April 2015). DLAP confirmed that meetings were taking place between the Highways Agency and DfT about whether s135 consent would be required.

DLAP explained that due diligence had revealed that a section of the M4 carriageway was designated as common land. In the first instance, they would seek for that land to be deregistered outside of the development consent process through a correction under the Commons Act 2006. However, in the eventuality that this was not possible, the Applicant would seek provision within the dDCO for the land to be declassified. The Planning Inspectorate asked if it would be possible to share any drafts of such a provision. DLAP agreed to send a special category land plan and potential drafting to the Planning Inspectorate following the meeting [In the week following the meeting, DLAP stated that upon review of the requirements of the PA2008 the above provision would no longer be necessary. A copy of the relevant commons decision was provided alongside this statement for information purposes.]

The Planning Inspectorate explained that it would be helpful for a table to be provided with the application identifying where the mitigation measures identified in the ES had been secured in the dDCO. DLAP asked where such a document would most helpfully be located in the application documents i.e. appended to the Explanatory Memorandum or to the ES. The Planning Inspectorate stated that it would be helpful for such a table to be provided as part of the ES.

## **Draft Development Consent Order: Articles**

The Planning Inspectorate drew attention to instances within the dDCO where DLAP had departed from 'modern drafting'. DLAP agreed to update these.

The definitions of 'maintain', 'commence' and 'commencement' were discussed, with the Planning Inspectorate drawing attention to advice in Advice Note 15. The Planning Inspectorate queried whether a definition of maintain should be restricted so as not to permit development outside the scope of the ES. DLAP noted the provisions as drafted in the Applicant's dDCO were consistent with other made Orders.

The Planning Inspectorate drew attention to the definition of 'authorised development' in Article 2(2) and sought clarification on how 'any other development authorised by this order' would be defined. DLAP confirmed there is no 'other development' to be authorised by the Order; all work is integral to the project and is now described in the Schedule 1. DLAP agreed to review the definition.

In respect of Article 2(2), DLAP agreed that definitions for 'bridleway', 'footpath', and 'footway' could be included.

In response to the Planning Inspectorate's query about the appropriateness of Article 3(2) (as those works should be defined in Schedule 1), DLAP confirmed that no works such as demolition of buildings were proposed, but where for example the demolition of structures was required, these could be included in Schedule 1.

In respect of Article 5, the Planning Inspectorate noted that the phrase "scope of" could be considered vague.

With reference to Article 6(2), the Planning Inspectorate asked to which of the works listed in Schedule 1 Article 6(1) would not apply. DLAP clarified that such works may be, for example, moving statutory undertakers' apparatus.

In respect of Article 9, the Planning Inspectorate asked whether it would be appropriate to allow the street authority to impose reasonable conditions on any consent given and whether an obligation to give the street authority notice should be included.

It was also queried whether the extent of the power should be restricted to the construction period (a similar point was discussed regarding Article 10). There was a discussion about whether the term "unreasonably withheld" was necessary in Article 9(4) if the wording of Article 41 remained. DLAP stated that it would consider deleting such references to rely on Article 41.

For Article 11(3), the Planning Inspectorate asked whether the maintenance of the bridge highway surface should be followed by wording "to the reasonable satisfaction of the street authority" as in Article 11(2).

For Article 13, the Planning Inspectorate queried whether reference in Article 13(1)(b) to paragraph (2) should be to paragraph (3).

The Planning Inspectorate commented that Article 14 currently provides a general power and asked whether it might be made more specific, drawing an example from the Thames Tideway Tunnel DCO (Article 16). Further, it was queried whether Article 20(4) should refer to Schedule 8 rather than Schedule 6.

The Planning Inspectorate queried the general powers under Article 27, in particular noting that Article 27(1)(a)(ii) extends the corresponding model provision, the effect of which is that although Schedule 9 identifies specific purposes for which specific plots can be temporarily used ((a)(i)), (a)(ii) is more general and does not require any specific purpose. The Planning Inspectorate queried whether the Explanatory Memorandum could explain why such a general residual power was required. In respect of land entered under Article 27(1)(a)(ii), it was also queried whether Article 27(2) should be amended to require the notice to identify the purpose for which entry is taken. Finally in the absence of a statement in the notice under Article 27(2) of the purpose for which temporary possession was taken, the Planning Inspectorate queried how an affected landowner could ascertain when the one year period would end.

The Planning Inspectorate asked if Article 32 was necessary, given that the powers to carry out the kinds of works referred to were generally subject to the need for the consent of the authority controlling the specific highway.

The Planning Inspectorate asked if an article in addition to Article 33 was required to provide for the situation where a tree is subject to a Tree Preservation Order. DLAP confirmed that this had been included.

The Planning Inspectorate enquired about the lack of an article to provide for consent/appeal procedures in relation to requirements.

The Planning Inspectorate highlighted the importance of ensuring that the Book of Reference, Land Plans and the provisions of the dDCO were consistent in dealing with special category land, common land, open space and fuel field allotments. DLAP believed that they would not require a special category replacement land plan or provisions as they were only seeking temporary rights over that land.

It was agreed that criteria by which the project is a Nationally Significant Infrastructure Project under s22 of PA2008 would be put in the introduction to the Explanatory Memorandum. DLAP considered that the wording in the preamble to the dDCO could be updated accordingly.

### **Draft Development Consent Order: Schedule 1**

The Planning Inspectorate asked whether there was any confusion about the lettered list of works in Work No 1. applying to both Works 1a and Work 1b. It was noted that the final list of works was wide ranging and the Planning Inspectorate queried whether sufficient detail had been given on each of the elements. Furthermore, it may be that those developments and works could impinge on the functions of other authorities, for example where they enabled substantial alterations to streets that would otherwise be controlled by the street authority. The Planning Inspectorate noted that there did not appear to be a requirement for prior consultation with or consent by such authorities. DLAP stated that the provisions did not supersede Articles 9 and 10.

In response to a discussion about the relationship of 'planning drawings' as referred to in Work 1b(c-o), DLAP noted that there had been changes and that drafting would be updated to make reference to specific plans within Article 37.

### **Draft Development Consent Order: Requirements**

The Planning Inspectorate gave general advice in respect 'tailpiece conditions'.

The Planning Inspectorate noted that some of the requirements (R7, R9 and R13) were not particularly clear as to when the required action must be carried out.

The Planning Inspectorate enquired whether R15 might be expanded to include a list of matters that would be included in any traffic management plan.

The Planning Inspectorate suggested that R17 could be amended to clarify that it relates to amendments to the scheme that had been authorised by a local authority. DLAP asserted that there would be a very limited number of these cases.

### **Draft Funding Statement (FS)**

The Planning Inspectorate confirmed it had no comments on the draft FS.

### **Draft Book of Reference**

The Planning Inspectorate suggested that horizontal lines could be used in the Book of Reference (BoR) to separate out each plot, and also suggested that page numbers could be provided in a footer. There was a discussion about whether a cross-reference to the relevant article number would be helpful. As three separate articles may be referred to, this provision in the BoR would be helpful. Finally it was suggested that reference to claims under PA2008 s152(3) could be included in Part 2 of the BoR.

### **Environmental Impact Assessment (EIA) and Habitats Regulations Assessment (HRA)**

The Planning Inspectorate noted the reference in the dDCO to proposed 'maintenance' works. It was advised that the likely characteristics of such works should be clearly explained in the ES and that any potential significant effects from the works should be assessed.

The Planning Inspectorate advised in relation to potential impacts on European sites that Advice Note 10 regarding HRA was currently being updated and that a new version would be available on the website in due course.

Following discussion about any other consents/permits required for the scheme, DLAP noted that the Applicant was hoping to secure a 'Letter of No Impediment' from EA/NE, and were aware of the importance of seeking to submit such a letter as early as possible in the process.

DLAP stated that it was its intended approach for the ES not to be a certified document.

### **Finer points on submission**

The Planning Inspectorate advised that the GIS shapefile would need to be submitted 2 weeks before submission of the application. Two hard copies of the application and three electronic copies (including one memory stick) were confirmed as being required.

The Highways Agency confirmed the anticipated submission date of the application to the Planning Inspectorate would not be before 20 March 2015 [later rescheduled to the end of March 2015]. DLAP confirmed that it would be happy for all application documents to be published upon receipt of the application.

### **Specific decisions / follow up required?**

No specific decisions / follow up required outside of advice given.